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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 97

(By Mr. McCourt, Mr. President and Mr. HUBBARD)

PASSED MARCH 9, 1972

In Effect 90 DAYS FROM Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-29-72

Veto-97

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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

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Senate Bill No. 97

(By MR. McCOURT, Mr. President, and MR. HUBBARD)

[Passed March 9, 1972; in effect ninety days from passage.]

AN ACT to repeal sections twenty-one and twenty-two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections nineteen and twenty of said article, relating to the suspension, demotion and discharge of members of the department of public safety; abolishing the board of commissioners of the department of public safety and creating a board of appeals for said department; relating to the rights of replacement appointees to said department; relating to the appointment, qualifications, terms, compensation and expenses of the members of the board of appeals; relating to the composition of and vacancies on said board of appeals; relating to the powers and duties of said board of appeals; relating to appeals to said board of appeals; relating to appeal hearings by said board of appeals and decisions following such hearings; relating to the effect of the sustaining or reversal of an order of the superintendent of the department of public safety relating to transfer of members; and providing for judicial review of a decision by the board of appeals which is adverse to a member of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That sections twenty-one and twenty-two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections nineteen and twenty of said article be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-19. Suspension, demotion or discharge of members.

1 The superintendent may suspend, demote in rank or

2 discharge from the service any member of the depart-
3 ment of public safety for any of the following causes:
4 Refusing to obey the orders of his superior officer, neglect
5 of duty, drunkenness, immorality, inefficiency, abuse of his
6 authority, interference with the lawful right of any person,
7 participation in political activities, primaries, conventions
8 or elections, or any other cause which may in the opinion
9 of the superintendent be necessary for the good of the
10 service. The superintendent shall cause an investigation
11 to be made when notice of any one or more of such causes
12 is brought to his attention and shall determine whether
13 or not the member should be suspended, demoted in rank
14 or discharged. If the superintendent orders the member
15 suspended, demoted in rank or discharged, a written state-
16 ment of the charges and a written order of suspension,
17 demotion in rank or discharge shall be delivered per-
18 sonally to the member by his commanding officer, or
19 next in command in the absence of his commanding officer.
20 The superintendent shall explicitly set forth in any such
21 written statement of charges the details giving rise to the
22 cause or causes upon which he ordered such suspension,
23 demotion in rank or discharge. The member may appeal
24 the superintendent's order to the board of appeals created
25 for such purpose, and all of the original papers in such
26 cases shall be delivered by the superintendent to such
27 board, which shall decide such cases in the manner here-
28 inafter provided.

29 Any person who shall by the superintendent be ap-
30 pointed to membership in said department as a replace-
31 ment appointee, pursuant to section two, article eleven,
32 chapter six of this code, may at any time be discharged
33 at the will and pleasure of the superintendent without
34 the assignment of cause and without right of appeal to
35 the board of appeals.

36 The right of a member to appeal suspension, demotion
37 in rank or discharge shall not apply to members who are
38 undergoing basic training at the department of public
39 safety academy.

40 Except in cases of emergency, no member of the de-

41 partment shall be transferred without having received
42 at least two weeks' notice of such transfer.

**§15-2-20. Board of appeals created; members, powers and
duties; appeal, hearing and decision.**

1 The board of commissioners, heretofore created in this
2 article, is hereby abolished, and there is hereby created a
3 board of appeals composed of five members appointed by
4 the governor, by and with the advice and consent of
5 the Senate. Each member shall serve for a term of five
6 years, except of the members first appointed, one shall
7 be appointed for a term ending the thirtieth day of June,
8 one thousand nine hundred seventy-three, and one each
9 for terms ending one, two, three and four years there-
10 after. Vacancies shall be filled for the unexpired term
11 by appointment of the governor, by and with the advice
12 and consent of the Senate. Members shall be residents
13 of the state and no more than three shall be members of
14 the same political party. A member shall hold no other
15 office (other than the office of notary public) or employ-
16 ment under this state during his term, and a member
17 may be reappointed on the expiration of his term.

18 As soon as practical after appointment of the board,
19 the members shall convene on call of the governor and
20 thereupon and annually thereafter elect a chairman and
21 such other officers as the board deems necessary. All other
22 meetings of the board shall be on call of the chairman.

23 Each member of the board shall be paid, from appro-
24 priations to the department, the sum of fifty dollars per
25 day for each day necessarily employed in the discharge
26 of his duties as a member of the board, and, in addition
27 thereto, he shall be reimbursed for all reasonable and
28 necessary expenses actually incurred in attending meet-
29 ings of the board.

30 Other than the annual meeting for the purpose of elect-
31 ing a chairman and other officers, the board shall not
32 meet except for the purpose of hearing and considering
33 appeals to it by members of the department.

34 Within fifteen days after a member of the department
35 has received a statement of charges and an order of

36 suspension, demotion in rank or discharge by the super-
37 intendent, he may appeal the order to the board by
38 filing with the board, or any of its members, a written
39 notice of appeal. Upon receipt of a notice of appeal, the
40 board shall immediately notify the superintendent by
41 sending him a copy of the notice of appeal and set a date
42 and time for a hearing on the appeal. The hearing shall
43 be set within thirty days after the board has received
44 member's notice of appeal and the superintendent
45 and member appealing shall be notified by the board of
46 the date and time at least fifteen days prior to the hearing.

47 Any member of the department who timely files a
48 notice of appeal, as aforesaid, may be represented by
49 an attorney or by any member of the department or
50 retired member who is receiving benefits from the death,
51 disability and retirement fund of the department. The
52 superintendent may be represented by counsel of his
53 choice and has the burden of proof at the hearing as to
54 the charges which he had found to be the cause or causes
55 for his order of suspension, demotion in rank or discharge.
56 The procedure in any hearing before the board shall be
57 informal and without adherence to the technical rules of
58 evidence required in proceedings in courts of record. All
59 evidence submitted to the board shall be submitted under
60 oath. The chairman, or any member of the board, shall
61 have authority to administer oaths to witnesses pre-
62 senting testimony at a hearing. The board shall designate
63 a reporter for any such hearing who shall report and tran-
64 scribe all of the proceedings. The accused member may
65 demand a public hearing on the charges, and in the
66 absence of such a demand, the board may determine
67 whether or not the hearing should be public. Any hearing
68 may be continued, recessed or adjourned by the board.

69 The superintendent shall provide reasonable office and
70 filing space for use of the board, routine secretarial and
71 clerical assistance and appropriate space for the conduct
72 of hearings. Cost of the reporter in transcribing any
73 hearing shall be paid by the superintendent from avail-
74 able appropriations. At the conclusion of the hearing
75 by the board, the board shall determine whether or

76 not the superintendent's order shall be sustained. If the
77 board decides that the superintendent's order shall be
78 sustained, it shall issue its decision in writing, with copies
79 thereof being sent by the board to the superintendent
80 and to the appealing member by certified mail, return
81 receipt requested. The member of the department may
82 appeal a decision of the board sustaining the super-
83 intendent's order to the circuit court of Kanawha county
84 within sixty days of receipt by the member of a copy of
85 the board's decision, and the court shall hear the appeal
86 upon the record and determine all questions submitted
87 to it on appeal from the decision of the board. In the
88 event any such decision is reversed upon judicial review,
89 which reversal is final, the superintendent shall return
90 the member to his status prior to the superintendent's
91 order, with full payment of any compensation withheld
92 and with full credit for service between the date the
93 superintendent issued his order and the date of the final
94 judicial decision reversing the decision of the board.

95 The board's decision shall be issued in writing
96 with copies thereof being sent by the board to the super-
97 intendent and to the appealing member by certified mail,
98 return receipt requested. A decision by the board to
99 reverse the order of the superintendent is final and not
100 subject to judicial review, and the superintendent shall
101 cancel his order and its effect and return the member to
102 his status prior to the order, with full payment of any
103 compensation withheld and with full credit for service
104 between the date the superintendent issued his order and
105 the date of the board's decision to reverse it.

106 A hearing shall be conducted by at least three mem-
107 bers of the board and the decision of the board shall be
108 made by a majority vote of all of the members of the
109 board. If the board is unable to reach a decision, by a
110 majority vote of all of its members, within sixty days after
111 the completion of the hearing, this fact shall be entered
112 by order of the board in the hearing record and shall have
113 the same effect and be treated in the same manner as pro-
114 vided above for decisions by the board to reverse the
115 superintendent's order.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Russell H. Beall
Chairman Senate Committee

Stephen J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Howard W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Edmund
President of the Senate

Lewis R. McNamee
Speaker House of Delegates

The within disapproved this the 27th
day of March, 1972.

Arch A. Moore Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date

3/17/72

Time

1:00 p.m.